IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3133 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA **Sd/-**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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OILABHAI M VASAVA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR JOY MATHEW for Petitioner(s) : 1,
MR MR MENGDEY, Ld. AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 08/03/2006

ORAL JUDGMENT

1. By this petition invoking Articles 14, 21 and 226 of the Constitution, the petitioner has prayed, in fact, for compensation in terms of the Government Resolutions dated 16.10.1982 and 4.5.1991.

2. The factual background of the petition is epitomizing the plight of a poor backward class citizen who has fallen victim to not only his own misfortune but the callous and ruthless treatment by not only the police but the officers of the higher echelons of the Government.

2.1. According to the petition, the petitioner lost his mother when he was a young boy and his only near relative and guardian was his father, a poor agricultural worker. While the father had gone for some time to live with his sister in a nearby village, on 25.8.1992, a few named members of the police staff came to the house of the petitioner's father's brother-in-law. They arrested that host alongwith his father, took them to the police post at Amletha, handcuffed them and paraded them through the village and so mercilessly beat them that his father lost his life. On coming to know about the arrest, the petitioner, who must have been a young boy at that time, reached the police post to find that a large number of people had gathered at the Police outpost and he himself had to see the scene of his father being beaten to death by none other than the members of the police force. When the petitioner followed the cavalcade of police vehicles to the civil hospital, he could not see his father and he was turned out by someone on

the ground that the D.S.P. had come there. It was only on the next day that some policemen came to fetch the petitioner and take him to the hospital for handing over the dead-body of his father. The dead-body had a number of injuries on it.

2.2. The police did not register any case against anyone. On 28th August, 1992, an NGO, named Lok Adhikar Sangh, filed a public interest litigation in this Court and after admission of that petition, being Special Civil Application No. 1434 of 1992, the Dy.S.P., Rajpipla directed the Circle Inspector of Police at Ankleshwar to enquire into the matter and an offence came to be registered as C.R. No. 278 of 1992 for the offences punishable under Sections 302 and 114 of the Indian Penal Code. Subsequently, chargesheet was filed against two policemen of Amletha outpost and two members of the so-called Gram Rakshak Dal. One Mr. K.R. Parmar-Circle Police Inspector at Ankleshwar stated in his affidavit-in-reply filed in this Court in SCA No. 1434 of 1992 that he had enquired about the accused by making enquiries but they were not found and they had not attended their duties. It was found by him that, on 2.9.1992, three of the accused had moved the Sessions Court for anticipatory bail under Section 438 of the Code of Criminal Procedure and the learned Sessions Judge had ordered not to arrest them till their application for bail was decided.

He further stated that another case registered as C.R. No. (I) 274 of 1992 revealed that the deceased father had committed an offence on 25.8.1992 in which the allegation was that he had attacked police personnel when they had gone in connection with the enquiry of the accused who was absconding. It was alleged that the deceased had tried to snatch away the rifle from the police personnel. It is, in substance, stated that the witnesses were co-operating in the investigation in the case against the deceased but, the witnesses were not co-operating in the investigation against the police.

3. After the above facts emerging from the petition and documents placed on record, the important fact brought to the notice of the Court by the judgment delivered in November, 1997 of the Additional Sessions Judge, Bharuch in Special Atrocity Case No. 64 of 1993 is that all the accused persons were acquitted and no appeal was filed by the State. One remarkable fact emerging from the bare perusal of the said judgment is that deposition of the petitioner was recorded in the trial court as Exh. 13 but no discussion thereof was found in the judgment. Thus, in short, a case of alleged murder resulted into acquittal, despite the deposition of several eye witnesses including the son of the deceased, the present petitioner and without any discussion of his deposition. Therefore, it is *prima*

facie a case of miscarriage of justice.

4. Against the above factual situation on the ground, the Welfare State, in its Social Welfare and Adivasi Development Department, has devised a scheme for giving financial assistance against atrocities to Scheduled Caste and Scheduled Tribe persons and the Government of Gujarat Resolution dated 16.10.1982 embodying that scheme, inter alia, states that it is resolved to give assistance of Rs. 10,000/- in case of death of an earning or non-earning family member of a family of Scheduled Caste and Scheduled Tribe persons. The scheme also provides for making an arrangement for secondary education and free residence to the children of the affected family. It is, however, required to be taken into consideration that the assistance is not availed by hardened criminals or criminal offenders. At the same time, it is specifically provided in the scheme that, ...“Still however, it should be seen that there is no interpretation that such persons are hardened criminals or criminal offenders, so that they may be deprived of such assistance. The hardened criminals who have been convicted by the Courts, shall not get assistance under this Scheme. In case of death, assistance will be given to the legal heir or to the person who is entitled to get financial assistance...”. The

Director, Social Welfare Department of the State Government is empowered to sanction financial assistance after making an “immediate enquiry” into atrocities case, without waiting for the result of the criminal proceedings. The original resolution, shown by the learned AGP, is in gujarati and the portion quoted hereinabove appears to be an incorrect translation. The original gujarati version, in substance, clearly stipulates that it should be ensured that the persons who are entitled to financial assistance should not be denied the benefit by such interpretation as would tend to hold the person concerned to be a hardened criminal or a criminal offender. Therefore, there is clear intention and direction not to deny financial assistance by making it an excuse that the victim of offence or atrocity was a criminal or a hardened criminal. In case of death the real victim of the atrocity is not just the deceased but the surviving family members are the victims who have to suffer the loss of either the member of the family or, as in the present case, the only guardian and bread winner.

4.1. The above Scheme incorporated in the resolution dated 16.10.1982 has been revised by the subsequent resolution dated 4.5.1991, which augments the amount of assistance from Rs. 10,000/- to Rs. 1 lakh, in case of murder of an earning or non-earning person, in the case of atrocities

committed on the persons of Scheduled Tribe.

5. By filing an affidavit of the District Backward Class Welfare Officer, Bharuch, it is submitted, after denying the essential averments made in the petition, that the benefit of the resolution dated 4.5.1991 would not be available to a hardened criminal or a criminal offender and the father of the petitioner who died in suspicious circumstances was a hardened criminal and was convicted by the competent Criminal Court in as many as six different cases. The D.S.P., Bharuch had, by the letter dated 25.2.1994, opined that the father of the petitioner was a hardened criminal and the Police Inspector of Rajpipla had also opined the same. It is further stated that it is yet to be proved by the petitioner that his father died due to atrocities committed on him. It is stated on oath that the deponent had considered the application of the petitioner and, by the letter dated 30.10.1993, informed him that, as the matter was under investigation by the District Collector, Bharuch, his application for compensation would be decided after receipt of the report of the District Collector, Bharuch. That affidavit was obviously drafted and affirmed before the judgment acquitting the accused persons on the ground of failure of the prosecution to prove the case beyond reasonable doubt and giving benefit of doubt to the accused.

6. It is clear from the record that the deceased father of the petitioner is taken by the respondents to be a hardened criminal on the basis of the report of D.S.P., Bharuch and P.I., Rajpipla, that enquiry required to be immediately conducted under the resolution dated 16.10.1982 has not been fully or properly carried out and concluded and the petitioner, who is nowhere stated to be a hardened criminal or a criminal offender, is denied the benefit intended by the aforesaid resolutions. A bare reading of the resolution would suggest that, by express language of the resolution, the benefit was intended to be denied to hardened criminal but when a dead person can, by no stretch, be a beneficiary of the resolution, the real beneficiary in such case, i.e. the other persons of the family, cannot be denied the benefit. There is no controversy about the fact that the petitioner was a member of the Scheduled Tribe and a young child alone was the most vulnerable among the vulnerable and oppressed sections of the society. Instead of making arrangement for his education and free residence in terms of the letter and spirit of the resolution dated 16.10.1982, the Social Welfare Department of the State Government has, for the last 14 years, only resisted the claim for compensation and even the hopes of getting justice at the hands of the Criminal Court have

been belied. The facts of this case speak volumes about not only the orientation of the members of the police force and the prosecution agency but about the attitude of the Welfare Department of the State Government, which is not dispensing favours but

playing an important role in meting out social justice.

7. In the above facts and circumstances, since the petitioner is not even alleged to be a hardened criminal or criminal offender and since death of his father was *ex* facie caused by an atrocious act of violence, without the details of which chargesheet against the accused could not have been filed, and since the respondents were required to find that in an “immediate enquiry” and had admittedly failed in doing so, the petitioner was entitled to the assistance envisaged by the aforesaid Government Resolutions dated 16.10.1982 and 4.5.1991. The unconsolable delay in reaching out to the victim and denying assistance at the time when it was most needed, also entitles the petitioner to receive the amount with interest and costs. It is also necessary, and in the interest of justice, to have the judgment of the Sessions Court, Bharuch camp at Rajpipla in Special Atrocity Case No. 64 of 1993, reviewed by this Court in exercise of its Suo motu power of revision under the provisions of Section

401 of the Code of Criminal Procedure.

8. Accordingly, the petition is allowed and the respondents are directed to pay to the petitioner, within a period of one month from the date of receipt of writ of this order, the sum of rupees one lakh with interest at the rate of 9% p.a. from 1.4.1994 to 31.3.2006. In case of further delay in payment, the total amount of compensation and interest incurred till 31.3.2006 shall carry penal interest at the rate of 12% p.a. Out of the total amount payable to the petitioner under this judgment, the sum of Rs. 60,000/- shall be paid to the petitioner by cheque in his name and the remaining amount shall be deposited in a post office monthly income scheme for such term and in such post office as may be suggested by the petitioner. A copy of the judgment of the learned Additional Sessions Judge, Bharuch in Special Atrocity Case No. 64 of 1993 shall be placed alongwith the copy of this judgment before the Court taking up criminal revision applications for appropriate orders.

9. Rule is made absolute accordingly with costs of Rs. 2,500/- (Rupees Two Thousand Five Hundred), which shall be paid by respondent No.1 to the petitioner.

Sd/-

(D.H. WAGHELA, J.)

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